IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.508 OF 1998

Vijaykumar Rasiklal Shah .. Petitioner

Versus

Tehsildar, Murbad, Dist.
District Thane and Anr. .. Respondents

Mr.P.B.Shah for petitioner
Mrs.S.S.Bhende, A.G.P. for respondent Nos. 1 to 3

CORAM : A.P.SHAH AND
S.C.DHARMADHIKARI, JJ.
DATE : 25TH OCTOBER 2004.

P.C.

1. This is a petition under Article 226 of the Constitution of India. Petitioner challenges the order cancelling his licence for sale of Kerosene. This Court admitted this petition on 23rd March 1998 and granted interim reliefs in

terms of prayer clause (d) and (e). No affidavit in reply has been filed opposing the petition. We had, therefore, to proceed in the absence of any counter affidavit.

2. It is contended by the petitioner that he is an active member of Congress party for more than two decades. He submits that he is carrying on business at Murbad of selling Iron sheets. Under the Public Distribution System, petitioner has been issued licence for sale of Kerosene by the respondents. He has been selling and distributing kerosene to card holders since 1973. There have been no complaints by the card holders or consumers of any nature whatsoever against the petitioner. The monthly quota of Kerosene allotted to petitioner is 1000 ltrs.

3. Petitioner has made specific allegation that business rivals and persons from other political party were bent upon harrassing him and tarnishing his fair name in the business. He has made specific allegation that second respondent, the then Minister for State for Food and Civil Supplies visited Murbad sometime in December

1997. He was accompanied by local M.L.A. In the presence of the Minister some persons belonging to other political parties made complaints about alleged irregularities in the supply, distribution and sale of Kerosene by petitioner. In the presence of about 100 persons in the locality, the Minister summoned the Tahsildar and directed to cancel the licence of the petitioner. Thereupon, a show cause notice was issued to the petitioner in which it was alleged that visit on 15th December 1997 revealed certrain irregularities and petitioner sold Kerosene to one customer at Rs.9/- per ltr. while the rate was Rs.2.59 per litre.

4. Petitioner replied to the show cause notice dated 1st January 1998 and denied all allegations.

5. Petitioner points out that a press note appeared in Marathi daily "Apla Vartahar" to the effect that second respondent has ordered cancellation of petitioner’s licence. He points out that other daily newspapers also carried this

news item. Petitioner was also informed by persons who were present at the office of Tahsildar, during the visit of respondent No.2, that his licence has been cancelled. Thereafter, petitioner received a copy of the impugned order dated 14th January 1998 cancelling his licence.

6. Shri Shah, learned Counsel appearing for petitioner submits that the order cancelling the licence merely sets out allegations in the show cause notice and the reply of petitioner thereto. Respondent No.1 does not give any reason to disbelieves explanation of petitioner. That apart, Shri Shah submits that show cause notice was only a formality inasmuch as during the visit of respondent No.2 he had already directed cancellation of petitioner's licence. The order is at the behest of respondent No.2 and political and business rivals of the petitioner. He submits that the action of cancelling petitioner's licence cannot be sustained and the impugned order, therefore, should be quashed and set aside.

7. There is much substance in the

contentions of Shri Shah. Smt.Bhende appearing for respondent Nos. 1 to 3 was unable to point out anything which would indicate that procedure presceribed by law for cancelling such licence has been followed in this case. She was unable to controvert allegations made in the petition.

8. In the light of the aforesaid, we have no hesitation in concluding that the impugned order cancelling petitioner's licence cannot be sustained. The same, therefore, deserves to be quashed and set aside. Rule is, therefore, made absolute in terms of prayer clause (b) with no orders as to costs.

9. We, however, clarify that quashing and setting aside of the impugned order shall not, in any manner, prevent the authorities from taking appropriate action in accordance with law in case petitioner has violated the terms and conditions on which the said licence has been granted. Such action can be initiated and proceeded with uninfluenced by quashing and setting aside of the impugned order.

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